

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION**

IN RE:	Rafael Rivera,	)	CHAPTER 13
		)	
	Debtor	)	
		)	CASE 11-24956
<hr/>			
		)	
RAFAEL RIVERA		)	
		)	
	Debtor / Plaintiff	)	ADVERSARY CASE:
		)	
V		)	No: _____
		)	
SELECT PORTFOLIO SERVICING,	)		
INC.	)		
		)	
	Defendant	)	
		)	

**COMPLAINT  
FOR VIOLATION OF DISCHARGE INJUNCTION**

1. This complaint is filed by the Debtor in the above captioned chapter 13 case. This Court has jurisdiction over this proceeding which arises in a case under the Bankruptcy Code and concerns property of the Debtors, pursuant to 28 U.S.C. § 1334. This is a core proceeding.

2. Debtor filed its Chapter 13 Petition on December 5, 2011.

3. In the Chapter 13 case, Debtor filed its Amended Motion to Determine Secured Status of Claim on February 8, 2012 (the “Motion to Strip Lien”) related to a second mortgage held by BAC Home Loan Servicing, LP (“BAC”). The second mortgage (the “Lien”) encumbered Debtor’s home at 3875 Overlake Drive Cumming, GA 30041 (the “House”).

4. On March 19, 2012, the Court entered its Order granting the Motion to Strip Lien (the “Order”) (Doc.No.27) (attached as ***Exhibit A***). The Order expressly held that the Lien held by BAC shall be treated entirely as a general non-priority unsecured claim. The Order further held that upon discharge of Debtor, the Security Deed recorded at Book 5229, Page 310 in the official records of Forsyth County shall be extinguished automatically.

5. Out of an abundance of caution, Debtor also filed a Notice of Cancellation of Lien in the public records of Forsyth County on September 27, 2017 at Book 8340, Page 553. (See ***Exhibit B***)

6. Debtor completed his Chapter 13 Plan and received a Discharge of all debts on May 11, 2017. (Doc. No. 88).

7. Notwithstanding the extinguished Lien and the discharge of all general unsecured debts, including the debt that was secured by the Lien (the “Debt”), Select Portfolio Servicing Inc. (“SPS”), as successor to BAC, is attempting to collect the Debt from the Debtor.

8. SPS has been informed of this violation by undersigned counsel and has refused to correct its statements and cease collection activities against Debtor.

9. Defendant has refused to release the lien on Debtors' homestead, claiming instead that the Debtor voluntarily modified his existing first mortgage by adding the discharged amount of the discharged Second Mortgage.

10. Defendant has violated 11 U.S.C. § 524 by attempting to collect the discharged debt and by continuing to list the discharged debt in the accounting showing all sums due from Debtor to SPS.

11. A sample collection notice which includes the sums discharged in the Second Mortgage is attached hereto as ***Exhibit C***.

12. WHEREFORE, Plaintiff prays the Court:

- a. Order Defendant to release the lien on Plaintiff's property as to the value of the Second Mortgage;
- b. Find that Defendant is in contempt of Court for violating 11 U.S.C. §§ 362 and 524;
- c. Award Plaintiffs damages, costs and attorney's fees pursuant to 11 U.S.C. § 362 and for punitive and exemplary damages.

d. Order such other relief as is just and proper.

This 6<sup>th</sup> day of March, 2025

Respectfully,

                         /s/                           
Howard P. Slomka  
Georgia Bar #652875  
Attorney for the Debtor  
Howard Slomka, PC  
6400 Powers Ferry Road, Suite 200  
Atlanta, GA 30339  
[Howie@Slomka.us](mailto:Howie@Slomka.us)  
770-856-5793

## **EXHIBIT A**



**IT IS ORDERED as set forth below:**

**Date: March 19, 2012**

  
\_\_\_\_\_  
Robert E. Brizendine  
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

IN RE:	
Rafael Rivera	) CHAPTER 13
	)
Debtor.	) CASE NO. 11-24956-reb
	)
Rafael Rivera	)
	)
Movant,	)
vs.	) CONTESTED MATTER
	)
BAC Home Loans Servicing, LP	)
	)
Respondent.	)

**ORDER GRANTING DEBTORS MOTION TO DETERMINE SECURED STATUS OF CLAIM**

The above matter came before the Court on March 7, 2012 on Debtor's Motion to Determine Secured Status of Claim (the "Motion") [Docket No. 22]. Debtor seeks a determination that the second priority lien held by BAC Home Loans Servicing, LP (the "Lien") on Debtor's residence located at 3875 Overlake Drive, Cumming, GA 30041 (the "Property") is completely unsecured because, based upon the Property's value and the amount of the first priority mortgage, there is no

equity in the Property to which the Lien can attach. No party filed a response or otherwise appeared in opposition to Debtor's Motion; therefore, it is hereby

**ORDERED** that Debtor's Motion is granted as provided herein; it is

**FURTHER ORDERED** that, for purposes of the Debtor's chapter 13 case, the claim of BAC Home Loans Servicing, LP related to the Lien shall be treated as a general non-priority unsecured claim; and it is

**FURTHER ORDERED** that, effective upon entry of discharge in the Debtor's Chapter 13 case, the Lien of BAC Home Loans Servicing, LP evidenced by a security deed recorded in the Superior Court of Forsyth County at Deed Book [5229], Page [310], shall be deemed void, and shall be extinguished automatically without further order pursuant to 11 U.S.C. section 506(d); provided, however, that the Court reserves jurisdiction to consider if appropriate the avoidance of Respondent's Lien prior to entry of a discharge under 11 U.S.C. section 1328(a). In the event the Debtor's case is dismissed or converted to chapter 7, the Lien of Respondent shall not be affected by this Order in accordance with 11 U.S.C. sections 349(b)(1)(C) or 348(f)(1)(B) as applicable.

**END OF DOCUMENT**

**PREPARED BY:**

/s/ **Howard Slomka**  
Howard Slomka, Esq.  
GA Bar #652875  
Attorney for Debtor  
Slomka Law Firm  
1069 Spring Street, NW  
Suite 200  
Atlanta, GA 30309  
Phone: 678.732.0001

**NO OPPOSITION:**

/s/  
Eric Roach, Staff Attorney for  
Trustee Nancy J Whaley  
GA Bar No. 143194  
Suite 120  
303 Peachtree Center Avenue  
Atlanta, GA 30303

The Slomka Law Firm  
1069 Spring Street, NW  
2nd Floor  
Atlanta, GA 30309

Nancy J Whaley  
Chapter 13 Trustee  
Suite 120  
303 Peachtree Center Avenue  
Atlanta, GA 30303

Brian T. Moynihan, CEO or his successor  
Bank of America Corporation  
401 N Tryon Street  
NC1-021-02-20  
Charlotte, NC 28255-0001

Lisa F. Caplan, Esq..  
Rubin Lublin Suarez Serrano, LLC  
3740 Davinci Court  
Suite 400  
Norcross, GA 30092

BAC Home Loans Servicing, LP  
Bankruptcy Department  
Mail Stop: CA6-919-01-23  
400 National Way  
Simi Valley, CA

BAC Home Loan Servicing, LP  
400 Countrywide Way  
Simi Valley, CA 93065

Rafael Rivera  
3875 Overlake Drive  
Cumming, GA 30041

## **EXHIBIT B**

Type: STATE LAND RECORDS  
Recorded: 9/27/2017 4:28:00 PM  
Fee Amt: \$20.00 Page 1 of 5  
Forsyth County, GA  
Greg G. Allen Clerk Superior Ct

Participant ID:

**BK 8340 PG 553 - 557**

Cross References:  
Book 5229, Page 310 (Assignment)  
Book 4265, Page 158 (Second Mortgage)

Prepared by and return to:  
Howard P. Slomka, Esq.  
Slipakoff & Slomka, PC  
2859 Paces Ferry Rd, SE  
Suite 1700 Atlanta, GA 30339  
(404)800-4001  
[HS@myatllaw.com](mailto:HS@myatllaw.com)

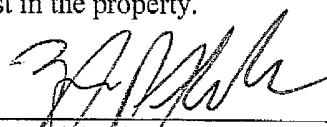
## **NOTICE OF CANCELLATION OF LIEN**

The undersigned counsel represented Rafael Rivera ("Owner") in his Chapter 13 Bankruptcy (Case 11-24956) filed on December 5, 2011 in the U.S. Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy").

As part of the Bankruptcy, Owner filed a Motion to Determine Secured Status of Claim (the "Motion") of the second mortgage held by BAC Home Loans Servicing, LP ("Lender") as amended or assigned (the "Second Mortgage"). Such a motion is commonly referred to as a motion to strip a lien. The Bankruptcy Court granted the Motion on March 19, 2012 when it issued the Order attached hereto as **Exhibit A** (the "Order"). Owner received his discharge in the Bankruptcy on May 11, 2017.

Pursuant to the Order, Owner's property at 3875 Overlake Drive, Cumming GA 30041 is no longer encumbered by the lien of the Second Mortgage. This Notice is filed to put this matter in the public record and so that all future buyers, lenders, or interested parties can rely on the cancellation of the Lender's security interest in the property.

Submitted this 26<sup>th</sup> day of September, 2017

  
Howard P. Slomka, Esq.

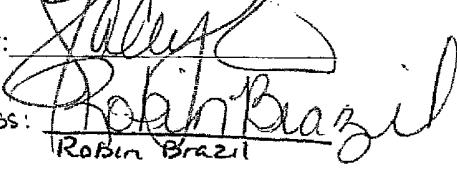
State of Georgia

County of Cobb

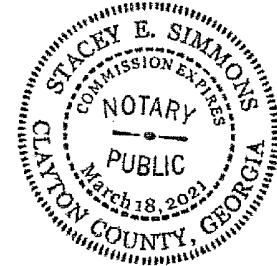
Sworn to and subscribed before me on the date shown above.

Notary:

Witness:

  
Robin Brazil

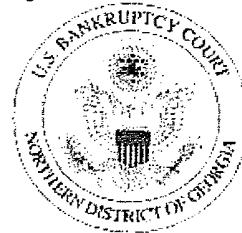
Seal:



# EXHIBIT A

[Order Stripping Lien]

Case 11-24956-jrs Doc 27 Filed 03/19/12 Entered 03/19/12 16:22:42 Desc Main Document - Motion to Strip Lien Page 1 of 3



**IT IS ORDERED as set forth below:**

**Date: March 19, 2012**

A handwritten signature in black ink, appearing to read "Robert E. Brizendine".

Robert E. Brizendine  
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

IN RE:		
Rafael Rivera	)	CHAPTER 13
Debtor.	)	CASE NO. 11-24956-reb
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vs.	)	CONTESTED MATTER
BAC Home Loans Servicing, LP	)	
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Case 11-24956-jrs Doc 27 Filed 03/19/12 Entered 03/19/12 16:22:42 Desc Main Document - Motion to Strip Lien Page 2 of 3

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**FURTHER ORDERED** that, for purposes of the Debtor's chapter 13 case, the claim of BAC Home Loans Servicing, LP related to the Lien shall be treated as a general non-priority unsecured claim; and it is

**FURTHER ORDERED** that, effective upon entry of discharge in the Debtor's Chapter 13 case, the Lien of BAC Home Loans Servicing, LP evidenced by a security deed recorded in the Superior Court of Forsyth County at Deed Book [5229], Page [310], shall be deemed void, and shall be extinguished automatically without further order pursuant to 11 U.S.C. section 506(d); provided, however, that the Court reserves jurisdiction to consider if appropriate the avoidance of Respondent's Lien prior to entry of a discharge under 11 U.S.C. section 1328(a). In the event the Debtor's case is dismissed or converted to chapter 7, the Lien of Respondent shall not be affected by this Order in accordance with 11 U.S.C. sections 349(b)(1)(C) or 348(f)(1)(B) as applicable.

**END OF DOCUMENT**

**PREPARED BY:**

/s/ Howard Slomka  
Howard Slomka, Esq.  
GA Bar #652875  
Attorney for Debtor  
Slomka Law Firm  
1069 Spring Street, NW  
Suite 200  
Atlanta, GA 30309  
Phone: 678.732.0001

**NO OPPOSITION:**

/s/  
Eric Roach, Staff Attorney for  
Trustee Nancy J Whaley  
GA Bar No. 143194  
Suite 120  
303 Peachtree Center Avenue  
Atlanta, GA 30303

Case 11-24956-jrs Doc 27 Filed 03/19/12 Entered 03/19/12 16:22:42 Desc Main Document - Motion to Strip Lien Page 3 of 3

**DISTRIBUTION LIST**

The Slomka Law Firm  
1069 Spring Street, NW  
2nd Floor  
Atlanta, GA 30309

Nancy J Whaley  
Chapter 13 Trustee  
Suite 120  
303 Peachtree Center Avenue  
Atlanta, GA 30303

Brian T. Moynihan, CEO or his successor  
Bank of America Corporation  
401 N Tryon Street  
NC1-021-02-20  
Charlotte, NC 28255-0001

Lisa F. Caplan, Esq..  
Rubin Lublin Suarez Serrano, LLC  
3740 Davinci Court  
Suite 400  
Norcross, GA 30092

BAC Home Loans Servicing, LP  
Bankruptcy Department  
Mail Stop: CA6-919-01-23  
400 National Way  
Simi Valley, CA

BAC Home Loan Servicing, LP  
400 Countrywide Way  
Simi Valley, CA 93065

Rafael Rivera  
3875 Overlake Drive  
Cumming, GA 30041

## **EXHIBIT C**

Customer Service: (800) 258-8602  
Monday - Friday 8:00AM - 9:00PM ET  
Saturday 8:00AM - 2:00PM ET

For other important information, see reverse side

+ 2159910 000046126 1300 P2

Rafael Rivera  
3875 Overlake Dr  
Cumming, GA 30041-2843  


48126



### Bankruptcy Message

Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.

We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.

Account Number	0015707946
Property Address	3875 OVERLAKE DR CUMMING GA 30041
Account Due Date	01/01/2025
Payment Due Date	01/01/2025
<b>Payment Amount</b>	<b>\$2,119.66</b>

### Explanation of Payment Amount

Principal	\$528.24
Interest	\$1,048.38
Escrow (Taxes and Insurance)	\$543.04
<b>Regular Monthly Payment</b>	<b>\$2,119.66</b>
Unpaid Late Charges	\$0.00
Other Charges and Fees	\$0.00
Charges / Fees this Period	\$0.00
Past Unpaid Amount(s)	\$0.00
Unapplied Payment(s)	\$0.00
<b>Total Payment Amount</b>	<b>\$2,119.66</b>

### Account Information

Interest Bearing Principal	\$372,756.30
Deferred Principal	\$119,882.69
Outstanding Principal <sup>1</sup>	\$492,638.99
Interest Rate (Fixed)	3.375%
Prepayment Penalty	No

### Transaction Activity (11/15/2024 to 12/13/2024)

Date	Description	Principal Balance	Interest	Taxes & Insurance	Late Charges	Other Fees	Total <sup>1</sup>
11/15 BEG BALANCE		\$493,245.87	\$1,050.08	\$508.25	\$0.00	\$0.00	\$494,804.20
11/30 PAYMENT	(526.54)		(1,050.08)	(543.04)	0.00	0.00	(2,119.66)
11/30 PRINCIPAL PAYMENT	(80.34)		0.00	0.00	0.00	0.00	(80.34)
12/13 ENDING BALANCE		\$492,638.99	\$0.00	(\$34.79)	\$0.00	\$0.00	\$492,604.20

### Past Payments Breakdown

	Paid Last Month	Paid Year To Date
Principal	\$606.88	\$6,999.24
Interest	\$1,050.08	\$12,711.33
Escrow (Taxes and Insurance)	\$543.04	\$6,989.43
Fees and Other Charges	\$0.00	\$0.00
Partial Payment (Unapplied)	\$0.00	
<b>Total</b>	<b>\$2,200.00</b>	<b>\$26,700.00</b>
Total Unapplied Balance		\$0.00

### Important Messages

All communication sent to you by SPS is always available on our website: [www.spbservicing.com](http://www.spbservicing.com). For faster access to written communication and documents, please log in to your customer account on our website to view.

<sup>1</sup>This amount is not a payoff quote. If you would like a payoff quote, please see instructions on reverse side.

Any transactions that occurred after the statement date noted above will be reflected on your next statement.





A

A

| Tell Us | 800-214-8400

My Account ▾

Assistance Programs ▾

Statements & Letters

Documents SPS ▾

Print

## Account Information Summary

Account Information	
Customer Number	0015707946
Customer Name	RAFAEL RIVERA
Debtors Name	
Origination Date	5/3/2006
Original Loan Amount	\$424,000.00
Loan Type	Conventional Without PMI
Interest Rate	3.375%
Maturity Date	6/2036

Last Payment Received	Scheduled Payment
	Date: 1/31/2025
	Amount: \$2,200.00

Current Balances	Ventura County Balances
Principal	\$491,420.12
Interest	\$1,120.87
Late Charges	\$0.00
Point Fees	\$0.00

\*If the account has an adjustable or step interest rate feature, the interest rate shown above may not be the current interest rate in effect on the account, but rather, it is the interest rate in effect as of the date through which the account is paid. Please contact us regarding any questions you may have regarding the interest rate or other aspects of the account.

Need further information, please Contact Us

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